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THE TAX LAWYER

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### Are You Ineligible For IRS' Offshore Account Amnesty?

Keeping mum about foreign accounts and income can be a **huge** mistake, as numerous [prosecutions](#) make clear. The IRS is pushing for global disclosure and compliance, and disclosure seem inevitable.



#### **You Must Report Worldwide**

**Income.** You must report your [worldwide income](#) on your U.S. income tax return. That's true even if you live outside the U.S. or pay foreign taxes on your foreign income. Plus, if you have a foreign bank account you must check "yes" (on Schedule B).

**FBARs Too.** In addition, all U.S. persons with foreign bank accounts exceeding \$10,000 at any time during the year must file an FBAR by each June 30. See [Primer For First Time FBAR Filers](#). The [penalty](#) for failing to file is \$10,000 for each non-willful violation. If willful, the penalty is the greater of \$100,000 or 50% of the amount in the account for each violation. Each year you didn't file an FBAR is a separate violation.

**New Form.** Commencing with your 2011 tax return, you may also need to file an IRS [Form 8938](#) to report your foreign accounts and assets. See [IRS Form 8938 Or FBAR?](#) and [More On IRS Form 8938 vs. FBAR](#).

**OVDP Eligibility.** Participating in the IRS Offshore Voluntary Disclosure Program ([OVDP](#)) is the best way out for many. But what if the IRS says you're ineligible? The IRS has a helpful set of FAQs [here](#). These were updated in late June, 2012 to list what could make you ineligible:

**John Doe Summons or Treaty Request.** The mere fact that the IRS served a John Doe summons, made a treaty request or took similar action does not make every member of the John Doe class or group identified in the treaty request or other action ineligible to participate. However, once the IRS or Department of Justice obtains information under a John Doe summons (see [IRS Summons? Meet John Doe](#)), treaty request or similar action that provides evidence of a *specific* taxpayer's noncompliance with the tax laws or Title 31 reporting requirements, that taxpayer will become *ineligible* for OVDP.

**Appealing Foreign Tax Decision About Disclosure.** If a taxpayer appeals a foreign tax administrator's decision authorizing the release of account information to the IRS, the taxpayer is required to serve notice of that appeal on the U.S. government. See [18 U.S.C. § 3506](#). Of course, serving the notice may defeat the purpose of the appeal. Still, if the taxpayer fails to serve the notice, he is ineligible to participate in the OVDP.

**Action Against Institutions.** The IRS may announce that taxpayers with accounts at particular financial institutions are ineligible for OVDP due to U.S. government actions in connection with that institution. Such announcements will provide notice and the prospective date eligibility will end.

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